

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-187444

DATE: October 20, 1976

MATTER OF: Catalytic, Inc.

DIGEST:

Protest filed more than 10 days after protester learns of basis for protest is untimely under General Accounting Office Bid Protest Procedures and will not be considered on its merits.

This is a protest by Catalytic, Inc. (Catalytic) against the award of a contract by the Environmental Protection Agency (EPA) to the Empire State Electric Energy Research Corporation (ESEERCO) on the asserted ground that the proposed award follows an evaluation that was in contravention of the procedures specified in the request for proposals (RFP) and the EPA procurement regulations.

On April 18, 1975, EPA issued RFP No. DU-75-A175, soliciting offers for a demonstration advanced flue gas desulfurization system. The RFP was furnished to electric utilities which had expressed an interest in the project pursuant to a "Sources Sought" advertisement in the Commerce Business Daily. According to the protester, "the solicitation pertained to * * * combined efforts of the host utility and a process supplier for the removal of sulfur dioxide from flue gas." Of the three utilities submitting proposals, two withdrew. ESEERCO proposed three alternative desulfurization processes for the project (including the Catalytic process) without, according to the protester, expressing any preference for any of the alternatives. On June 24, 1976, EPA advised ESEERCO that it had selected the proposal with Atomics International as process supplier for final contract negotiation. Subsequent to that date, the protester requested a debriefing by the agency which took place on August 11, 1976. The contract utilizing the Atomics process was awarded to ESEERCO on September 30, 1976.

Catalytic first filed a protest with EPA on September 14, 1976, and with this Office on September 16, 1976. However, our Bid Protest Procedures, 4 C.F.R. Part 20 (1976), require that

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protests be filed not more than 10 days after the protester learned of the basis for protest, See 4 C.F.R. 20.2(b)(2). The filing of the protest is therefore untimely. Accordingly, the protest will not be considered on its merits.

for Milton Forster
Paul G. Dembling
General Counsel